STATE OF MICHIGAN

COURT OF APPEALS

KEVIN ADELL and WORLD RELIGIOUS RELIEF, INC., Plaintiffs-Appellants, v MILLER, CANFIELD, PADDOCK & STONE, PC and THOMAS CRANMER, Defendants-Appellees.	UNPUBLISHED December 4, 2014 No. 317277 Oakland Circuit Court LC No. 2012-131363-NZ
KEVIN ADELL and WORLD RELIGIOUS RELIEF, INC., Plaintiffs-Appellees, v MILLER, CANFIELD, PADDOCK & STONE, PC and THOMAS CRANMER, Defendants-Appellants.	No. 317811 Oakland Circuit Court LC No. 2012-131363-NZ

Before: RIORDAN, P.J., and SAAD and TALBOT, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order that granted summary disposition to defendants under MCR 2.116(C)(10). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In 2008, plaintiffs Kevin Adell ("Adell") and World Religious Relief, Inc ("WRR")[1] were sued by the trustees of the Franklin Adell Trust ("the 2008 lawsuit"). Adell and WRR assert that they retained defendants Miller Canfield and Thomas Cranmer to represent them in this suit. The litigation continued for some time, and at some point Adell and another WRR employee involved in the litigation, Ralph Lameti, were held in contempt of court. Plaintiffs claim that despite Adell's insistence, Miller Canfield and Cranmer did not appeal Adell's contempt citation. This supposedly required plaintiffs to settle the 2008 lawsuit at a disadvantage.

In December 2012, plaintiffs brought the instant action in the Oakland Circuit Court, and alleged that defendants committed legal malpractice under the Michigan Rules of Professional Conduct when they did not appeal the contempt citation. They initially offered no substantive support for these allegations,[2] but eventually provided an affidavit[3] of Lameti, who stated:

> 15. I personally never executed any engagement and/or retainer agreement with Miller Canfield Paddock & Stone, P.L.C. relative to the 2008 [lawsuit] . . . and/or other litigation; yet Miller Canfield Paddock & Stone, P.L.C. performed legal services on my behalf and on behalf of The Word Network a/k/a World Religious Relief, Inc, in both, and other matters.
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> 16. I have never seen an executed engagement and/or retainer agreement between Miller Canfield Paddock & Stone P.L.C and Kevin Adell relative to the 2008 [lawsuit] . . . and/or other litigation; yet Miller Canfield Paddock & Stone, P.L.C. performed legal services on behalf of Kevin Adell and on behalf of The Word Network a/k/a World Religious Relief, Inc. in both, and other matters.

Plaintiffs also submitted various billing records and letters from Cranmer and Miller Canfield addressed to Lameti and Michael Schwartz, then general counsel to WRR. This correspondence was dated variously from October 2010 to March 2011, and explicitly mentions an appeal for a contempt citation lodged against "Defendant Ralph Lameti."[4]

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[1] According to plaintiffs, WRR is also referred to as "The Word Network."

[2] Plaintiff only provided substantive support for its allegations after defendants filed a motion for summary disposition under MCR 2.116(C)(10). In their reply, plaintiffs stated that defendants' motion "caused Plaintiff to further investigate its records" for evidence to substantiate its claims—something one would assume plaintiffs would do *before* they brought a lawsuit.

[3] The affidavit is dated April 11, 2013.

[4] Indeed, the only mention of Adell in the billing records is in connection with Lameti's contempt citation. In full, the relevant entries, dated September 8 and 9, 2010, read:

> 09/08/10. Begin outlining response to Petitioners' Motion for an Order Directing Kevin Adell and Ralph Lameti to Show Cause Why They Should Not Be Held in Contempt of Court for Violating the Court's March 30, 2010 Order.

Defendants brought a motion for summary disposition under MCR 2.116(C)(7) and (C)(10), and stated that they never had an attorney-client relationship with Adell or WRR in connection with the 2008 lawsuit.[5] Accordingly, defendants argued, plaintiffs could not sustain a claim of legal malpractice. Defendants also asked the trial court to grant sanctions against plaintiffs under MCR 2.114, due to the purported frivolity of plaintiffs' complaint.

In their motions, defendants further explained that they had represented Lameti—and only Lameti—in the 2008 lawsuit, to assist him with his contempt citation.[6] Defendants also stated that they had represented WRR on other occasions unrelated to the 2008 lawsuit, but had never represented Adell. The contempt order, on which plaintiffs based their action, was for Kevin Adell as an individual, and thus not within the scope of any representation undertaken by defendants for WRR. To support their contentions, defendants pointed to the fact that the billing records and letters submitted by plaintiffs referenced work on behalf of Lameti—not Adell. Defendants argued that Lameti's vague suggestions otherwise were false, and that he committed perjury when he made his affidavit.

At a May 2013 motion hearing, the trial court granted defendants' motion for summary disposition per MCR 2.116(C)(10),[7] and ultimately rejected their request for sanctions. It reasoned that plaintiffs were hobbled in their effort to conduct a reasonable inquiry before bringing the action because of Schwartz's departure from WRR, and that the impending application of the statute of limitations made their filing of the action reasonable under the circumstances.

> 09/09/10. Review of and revising of Defendant Ralph Lameti's Response and Brief in Opposition to the Plaintiff's Motion for an Order to Show Cause; correspondence with clients in that regard.
>
> 09/09/10. Round trip travel to Troy office conference with Tom Cranmer to discuss Petitioners' Motion for an Order Directing Kevin Adell and Ralph Lameti to Show Cause Why They Should Not Be Held in Contempt of Court for Violating the Court's March 30, 2010 Order and potential action for declaratory judgment; draft Defendant Ralph Lameti's Brief in Opposition to Petitioners' contempt motion.

[5] Defendant Cranmer stated in an affidavit that neither he nor Miller Canfield represented plaintiffs in connection with the 2008 lawsuit.

[6] Defendants attached a letter of engagement, dated September 13, 2010 and addressed to Ralph Lameti, in which they agreed to represent Lameti, and only Lameti, in conjunction with his contempt citation in the 2008 lawsuit. The letter specifically states: "[n]either I [Cranmer] nor the Firm [Miller Canfield] have been engaged to perform any service other than as described in this letter."

[7] The trial court also granted defendants' motion for summary disposition under MCR 2.116(C)(8), but because the trial court obviously considered evidence outside the pleadings in making its decision, we analyze its grant of summary disposition pursuant to MCR 2.116(C)(10). *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007).

Both plaintiffs and defendants have appealed an aspect of the trial court's order. Plaintiffs argue that the trial court erred when it: (1) granted summary disposition to defendants under 2.116(C)(10); and (2) refused to allow them to amend their complaint to expand the basis of their malpractice claim to encompass defendants' representation of WRR in an unrelated 2010 lawsuit. Defendants argue that the trial court erred when it refused to impose sanctions on plaintiffs under MCR 2.114.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When it evaluates a motion for summary disposition brought under MCR 2.116(C)(10), a court considers the "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id*. (citations omitted). "A genuine issue of material fact exists when the record . . . leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "MCR 2.116(I)(5) requires that if summary disposition is appropriate under MCR [2.116(C)(10)] . . . plaintiffs shall be given the opportunity to amend their pleadings, unless the amendment would be futile." *Ghanam v Does*, 303 Mich App 522, 543; 845 NW2d 128 (2014).

A trial court's decision on the imposition of sanctions is reviewed for clear error. *Holton v Ward*, 303 Mich App 718, 734 n 20; 847 NW2d 1 (2014). "The trial court's decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed." *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

III. ANALYSIS

A. MOTION FOR SUMMARY DISPOSITION

To establish a claim of legal malpractice, a plaintiff must prove, among other things, "the existence of an attorney-client relationship." *Coble v Green*, 271 Mich App 382, 386; 722 NW2d 898 (2006). An attorney-client relationship is established by "[t]he rendering of legal advice and legal services by the attorney and the client's reliance on that advice or those services." *Macomb Co Taxpayers Ass'n v L'Anse Creuse Pub Schs*, 455 Mich 1, 11; 564 NW2d 457 (1997). "[W]hen an attorney is hired to represent a corporation, his client is the corporation rather than the shareholders." *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 44; 698 NW2d 900 (2005).

Here, when viewed in the light most favorable to the plaintiffs, the record does not show the existence of an attorney-client relationship between plaintiffs and defendants, in that there is no indication that defendants "render[ed] legal advice and legal services" to plaintiffs. *Macomb Co Taxpayers Ass'n*, 455 Mich at 11. In fact, the record belies the existence of such a relationship—it is clear that Miller Canfield's representation in the 2008 lawsuit was limited to

Lameti, and Lameti alone. The only item in the record that affirmatively supports plaintiffs' claim of an attorney-client relationship is Lameti's affidavit, in which he states:

> 15. I personally never executed any engagement and/or retainer agreement with Miller Canfield Paddock & Stone, P.L.C. relative to the 2008 [lawsuit] . . . and/or other litigation; yet Miller Canfield Paddock & Stone, P.L.C. performed legal services on my behalf and on behalf of The Word Network a/k/a World Religious Relief, Inc, in both, and other matters.
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> 16. I have never seen an executed engagement and/or retainer agreement between Miller Canfield Paddock & Stone P.L.C and Kevin Adell relative to the 2008 [lawsuit] . . . and/or other litigation; yet Miller Canfield Paddock & Stone, P.L.C. performed legal services on behalf of Kevin Adell and on behalf of The Word Network a/k/a World Religious Relief, Inc. in both, and other matters.

This is hardly a ringing assertion that defendants represented plaintiffs in the 2008 lawsuit, and, again, it is contradicted by other evidence in the record, which indicates that defendants represented only Lameti in that action. The letters and billing records submitted by plaintiffs are addressed specifically and exclusively to Lameti and Schwartz, and only reference Lameti's involvement in the motion for contempt.[8] As noted, Adell is only mentioned in these records in the context of work performed on behalf of Lameti:

> 09/08/10. Begin outlining response to Petitioners' Motion for an Order Directing Kevin Adell and Ralph Lameti to Show Cause Why They Should Not Be Held in Contempt of Court for Violating the Court's March 30, 2010 Order.
>
> 09/09/10. Review of and revising of Defendant Ralph Lameti's Response and Brief in Opposition to the Plaintiff's Motion for an Order to Show Cause; correspondence with clients in that regard.
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> 09/09/10. Round trip travel to Troy office conference with Tom Cranmer to discuss Petitioners' Motion for an Order Directing Kevin Adell and Ralph Lameti to Show Cause Why They Should Not Be Held in Contempt of Court for Violating the Court's March 30, 2010 Order and potential action for declaratory judgment; draft Defendant Ralph Lameti's Brief in Opposition to Petitioners' contempt motion.

More importantly, plaintiffs do not seem to understand the difference between retaining counsel as an individual and retaining counsel as a corporation. To repeat, "when an attorney is hired to represent a corporation, his client is the corporation rather than the shareholders."

[8] Despite plaintiffs' assertions to the contrary, there is nothing odd about Schwartz being copied on such communications—he was the general counsel of WRR, and one of WRR's employees, Lameti, was involved in litigation. His inclusion would be a matter of proper communication, form, and common courtesy.

Prentis Family Foundation, 266 Mich App at 44. Even if defendants did represent WRR in the 2008 lawsuit—and there is nothing in the record to suggest that they did—the supposed malpractice of which plaintiffs complain relates to Adell alone, namely, a contempt citation entered against *him*, not WRR. And, again, there is nothing in the record that suggests defendants represented Adell as an individual in the 2008 lawsuit, or in any litigation.

In sum, this case boils down to whether defendants represented Adell in the 2008 lawsuit. But, tellingly, Adell did not submit an affidavit stating that defendants represented him and WRR in the 2008 lawsuit. By contrast, Cranmer submitted an affidavit in which he states that neither he nor Miller Canfield represented Adell in connection with the 2008 lawsuit.

Accordingly, the trial court properly granted defendants' motion for summary disposition under MCR 2.116(C)(10).[9]

B. SANCTIONS

"If a pleading is signed in violation of MCR 2.114(D), the party or attorney, or both, must be sanctioned." *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). MCR 2.114(F) specifies that "a party pleading a frivolous claim . . . is subject to costs as provided in MCR 2.625(A)(2)." "In turn, MCR 2.625(A)(2) states, '[I]f the court finds an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.'" *Holton*, 303 Mich App at 734. In relevant part, MCL 600.2591 mandates that:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
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> * * *
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:

[9] Plaintiffs' claim that the trial court should have allowed it to amend its complaint is without merit. As noted, plaintiffs' specific request involved an expansion of the complaint to include defendants' representation of WRR in an unrelated lawsuit in 2010. This topic is wholly unrelated to the present action, which focuses on Adell's representation in the 2008 lawsuit. It is thus impossible to see how the inclusion of such information would be anything but "futile." *Ghanam*, 303 Mich App at 543. Moreover, plaintiffs' proposed amendment is far outside the realm of the simple, but substantively relevant, pleading misstatements which parties usually seek to correct in amended complaints. The trial court therefore correctly refused plaintiffs' request to amend its complaint.

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

In this case, defendants argue that the trial court erred when it denied their requests for sanctions, because: (1) a 2010 engagement agreement between WRR and defendants on representation in a separate lawsuit limits defendants' representation to that separate lawsuit; (2) plaintiffs did not undertake a reasonable inquiry before bringing this action; and (3) Lameti's affidavit contained perjury.

None of these arguments demonstrate that the trial court clearly erred when it refused to impose sanctions on plaintiffs. The 2010 engagement agreement, and its statement of limited representation, is irrelevant to this case, as it involves a wholly separate lawsuit. The trial court specifically addressed defendants' assertion on plaintiffs' reasonable inquiry, and noted that WRR's records were in disarray, owing to the departure of its general counsel, Schwartz, and that the statute of limitations likely would have barred the suit if plaintiffs had not filed when they did. We are not left with the "definite and firm conviction" that the trial court's reasoning on this matter is a mistake. Nor did the trial court make a mistake by refusing to grant sanctions on the basis of Lameti's alleged perjury—defendants' argument stating that Lameti did so is conclusory. And though the court did not address this issue directly, it was clearly aware of defendants' assertions, and stated that it "carefully considered the parties' arguments" in its determination.

Affirmed.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Michael J. Talbot